# A Ravindran a/l Aruchunan & Ors v Nagappan a/l Athiyan Chetty @ AT Nagappan & Ors

HIGH COURT (MUAR) — CIVIL SUIT NO 22–59 OF 1999
JEFFREY TAN J
27 MARCH 2001

***Unincorporated Associations*** *— Societies — Internal management — Meetings — Plaintiff seeking declaratory orders on issues pertaining to internal management of society — Proper sanction of annual general meeting — Whether annual general meeting held sanctioned by the committee of the society — Whether there was delay by the plaintiff in seeking declaratory orders*

This was an action brought by the plaintiffs who were members of a registered society ('the society') against the society in the names of its office bearers, the defendants, for inter alia, a declaration that the annual general meeting ('AGM') held on 1 July 1998 and the election of the president, deputy president, honorable secretary, assistant honorable secretary, honorable treasurer, committee members, trustees and auditors, were all null and void and of no effect, and other consequential orders. On 17 June 1998, a committee meeting ('CM') was held where 14 committee members attended. Nine committee members (including the plaintiffs and the assistant secretary) refused to sign the attendance book. It was announced during the CM that the meeting would not be proceeded with unless all had signed the attendance book. The nine committee members then walked out of the CM. An AGM was held on 1 July 1998. The defendants contended that the CM on 17 June 1998 decided that the AGM was to be originally held on 27 June 1998 but that important matter was not minuted. On 20 June 1998, a meeting was held attended by the president, secretary and treasurer which decided that the AGM be postponed to 1 July 1998. The defendants also contended that there was delay on the part of the plaintiffs in seeking for declaratory relief. The parties agreed that the issue for determination was whether the 1 July 1998 AGM was sanctioned or not sanctioned by the committee of the society.

**Held**, allowing the plaintiffs' application with costs:

(1) Since it was announced to all present at the 17 June 1998 CM that the meeting would not proceed unless all had signed the attendance book, it would have been vile and machiavellian on the part of the remaining committee to proceed to business. But if the remaining committee proceeded nonetheless to business, then where were those minutes? If it was just not minuted, because of an oversight, then why were the minutes not amended all this while? The defence witness had himself verified those minutes. Given the material before the court, the only reasonable conclusion must be that the 17 June 1998 CM had not proceeded at all to business. There was no sanction for the AGM to be held

on 27 June 1998 or 1 July 1998. The was also no delay; unlike *Sivasubramaniam v Chong Cheong Wah* [1993] 1 MLJ 157, where the declaration was only sought at a late stage of the trial, the instant declaration was sought right from the start (see p 714F–H).

(2) In the context of the constitution of the society which must be read as a whole, the secretary shall 'convene' meetings only if so decided and directed by the committee. Without the sanction or approval of the committee, the secretary has no plenary powers to convene an AGM. The secretary is the servant rather than the overlord of the society. On the matter of an AGM, which is most serious business, the secretary cannot decide for the society (see p 712A–B).

(3) If there was a committee meeting on 20 June 1998 to sanction the AGM on 1 July 1998, then the committee meeting was null and void as the plaintiffs were not notified on the meeting. Although the plaintiffs had expressed no confidence in the principal office bearers and had walked out from the 17 June 1998 CM, they had not vacated their seats and were committee members, with the right to notice of and to attend all plenary sessions of the committee (see p 712D–E).

(4) If there was such a committee meeting on 20 June 1998 to sanction the AGM on 1 July 1998, then the committee meeting was null and void also because it was not called in accordance with the constitution of the society. Rule 23(a) of the constitution of the society stipulates that 'the managing committee shall meet at least once in every month'. Rules 23(b) of the constitution of the society stipulates that 'an extraordinary meeting of the managing committee shall be called upon the written request of the president or any four of the committee members'. As such, an EGM of the committee could be called, only upon the written request of the president or any four of the committee members. But there is no evidence, not even from the defendants, that the president or any four of the committee members had requested, be it orally or in writing, for an EGM of the committee. In the case of the so-called 20 June 1998 CM, without notice, not properly called, and without a quorum, it was no meeting of the committee. 'The mere fact that a number of of members sufficient to form a quorum may meet casually, does not constitute a meeting where the other requisites are absent'; Shackelton on the Law and Practice of Meeting (8th Ed) para 5–02. All 'decisions' reached thereat, were not decisions of the committee (see p 712F–H).

[**Bahasa Malaysia summary**

Ini adalah satu tindakan yang dimulakan oleh plaintif-plaintif yang merupakan ahli-ahli kepada satu persatuan berdaftar ('persatuan

tersebut') terhadap persatuan tersebut dalam nama pemegang-pemegang jawatan, iaitu defendan-defendan, untuk antara lain, satu deklarasi bahawa mesyuarat am tahunan ('MAT') yang diadakan pada 1 Julai 1998 dan pengundian presiden, timbalan presiden, setiausaha kehormat, penolong setiausha kehormat, bendahari kehormat, ahli-ahli jawatankuasa, pemegang-pemegang amanah dan auditor-auditor, adalah batal dan tak sah dan tidak berkuatkuasa, dan lain-lain perintah yang penting. Pada 17 Jun 1998, satu mesyuarat jawatankuasa ('MJ') telah diadakan di mana 14 orang ahli-ahli jawatankuasa telah hadir. Sembilan orang ahli jawatankuasa (termasuk plaintif-plaintif dan penolong setiausaha) telah enggan untuk menandatangani buku kehadiran. Ia telah diumukan semasa MJ tersebut bahawa mesyuarat tersebut tidak boleh diteruskan kecuali semua menandatangani buku kehadiran. Sembilan orang ahli jawatankuasa tersebut kemudiannya telah keluar daripada MJ tersebut. Satu MAT telah diadakan pada 1 Julai 1998. Defendan-defendan telah menegaskan bahawa MJ pada 17 Jun 1998 telah memutuskan bahawa MAT pada asalnya diadakan pada 27 Jun 1998 tetapi perkara penting tersebut telah tidak diminitkan. Pada 20 Jun 1998, satu mesyuarat telah diadakan yang dihadiri oleh presuden, setiausaha dan bendahari yang telah memutuskan bahawa MAT ditunda kepada 1 Juali 1998. Defendan-defendan juga menegaskan bahawa terdapat kelewatan di pihak plaintif-plaintif dalam memohon relif deklarasi. Pihak-pihak bersetuju bahawa persoalan untuk penentuan adalah sama ada MAT 1 Julai 1998 tersebut telah disanksikan atau tidak disanksikan oleh jawatankuasa persatuan tersebut.

**Diputuskan**, membenarkan permohonan plaintif-plaintif dengan kos:

(1) Memandangkan ia telah diumumkan kepada semua yang hadir pada MJ 17 Jun 1998 bahawa mesyuarat tersebut tidak boleh diteruskan kecuali semua menandatangani buku kehadiran, ia adalah keji dan penuh tipu muslihat di pihak baki jawatankuasa yang tinggal untuk meneruskan urusan tersebut. Tetapi jika baki jawatankuasa yang tinggal tersebut telah meneruskan lain daripada urusan, maka di manakan minit-minit tersebut? Jika ia tidak diminitkan, kerana satu kesilapan, maka kenapakah minit-minit tersebut tidak dipinda sekian masa ini? Pembelaan saksi telah mengesahkan sendiri minit-minit tersebut. Setelah bahan tersebut dihadapkan ke mahkamah, hanya satu kesimpulan yang munasabah adalah bahawa MJ 17 Jun 1998 tersebut tidak diteruskan langsung. Tiada sanksi untuk MAT untuk diadakan pada 27 Jun 1998 atau 1 Julai 1998. Tiada juga kelewatan; tidak seperti *Sivasubramaniam v Chong Cheong Wah* [1993] 1 MLJ 157, di mana deklarasi hanya dipohon diperingkat akhir perbicaraan, deklarasi sekarang ini dipohon dari mula lagi (lihat ms 714F–H).

(2) Di dalam konteks perlembagaan persatuan tersebut yang mestilah dibaca secara keseluruhan, setiausaha hendaklah 'bersidang' akan mesyuarat-mesyuarat hanya jika telah diputus dan diarahkan oleh jawatankuasa. Tanpa sanksi atau kebenaran jawatankuasa, setiausaha tidak mempunyai kuasa mutlak untuk satu MAT bersidang. Setiausaha adalah ibarat hamba dan bukan dipertuan persatuan tersebut. Berhubung perkara MAT, yang merupakan satu urusan penting, setiausaha tidak boleh membuat keputusan untuk persatuan tersebut (lihat ms 712A–B).

(3) Jika terdapat satu mesyuarat jawatankuasa pada 20 Jun 1998 untuk mensanksikan MAT pada 1 Julai 1998, maka mesyuarat jawatankuasa tersebut adalah batal dan tak sah kerana plaintif-plaintif tidak menyatakan apa-apa keyakinan dalam pemegang-pemegang jawatan utama dan telah keluar daripada MJ 17 Jun 1998 tersebut, mereka tidak mengosongkan tempat keahlian mereka dan adalah ahli-ahli jawatankuasa, dengan hak kepada notis dan untuk hadir semua sesi-sesi pleno jawatankuasa tersebut (lihat ms 712D–E).

(4) Jika terdapat satu mesyuarat jawatankuasa pada 20 Jun 1998 untuk mensanksikan MAT pada 1 Julai 1998, maka mesyuarat jawatankuasa tersebut adalah batal dan tak sah kerana ia tidak dipanggil menurut perlembagaan persatuan tersebut. Peraturan 23(a) perlembagaan persatuan tersebut memperuntukkan bahawa 'jawatankuasa yang mengurus hendaklah berjumpa sekurang-kurangnya sekali dalam sebulan'. Peraturan 23(b) perlembagaan persatuan tersebut memperuntukkan bahawa 'satu mesyuarat luar biasa kepada jawatankuasa yang mengurus hendaklah dipanggil atas permintaan bertulis presiden atau mana-mana empat ahli jawatankuasa persatuan'. Oleh itu, satu MLB persatuan tersebut patut dipanggil, hanya atas permintaan bertulis presiden atau mana-mana empat ahli jawatankuasa persatuan tersebut. Tetapi tiada keterangan, walaupun daripada defendan-defendan, bahawa presiden atau mana-mana empat ahli jawatankuasa persatuan tersebut telah meminta, secara lisan atau bertulis, untuk satu MLB persatuan tersebut. Di dalam keadaan MJ 20 Jun 1998, tanpa notis, tidak dipanggil dengan betul, dan tanpa qorum, tiada mesyuarat persatuan tersebut. 'Dengan hanya berdasarkan fakta bahawa sebilangan ahli yang mencukupi untuk membentuk satu qorum, mungkin berjumpa biasa, tidak membentuk satu mesyuarat di mana ahli-ahli yang lain dianggap tidak hadir'; *Shackelton on the Law and Practice of Meeting* (8th Ed) perenggan 5–02. Semua 'keputusan-keputusan' yang diputuskan di sini, bukan keputusan-keputusan jawatankuasa tersebut (lihat ms 712F–H).]

**Notes**

For cases on societies, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 2122–2203.

**Cases referred to**

*Cheang Kok Cheow v Setiausaha Kehormat Bagi Pertubuhan Akitek Malaysia & Anor* [1994] 1 CLJ 252 (refd)
*Sivasubramanian v Chong Cheong Wah* [1973] 1 MLJ 157 (refd)
*Tan Guan Eng v BH Low Holdings Sdn Bhd & Ors and other actions* [1992] 1 MLJ 105 (refd)
*Tan Kah Wich & Ors v Datuk Phua Cheng Leong* [1979] 2 MLJ 259 (refd)

*Etican Ramasamy* (*E Ramasamy & Co*) for the first and third plaintiffs.
*SN Gandhi* representing himself as the second plaintiff.
*N Chandra Mohan* (*HY Lee & Mohan*) for the second and third defendants.

**Jeffrey Tan J:.** This is an action, brought by plaintiffs who are members of a registered society known as Sri Mariamman Temple Paripalana Saba Batu Pahat ('the society') against the society in the names of its office-bearers — the defendants are respectively the president (up till 6 May 1999), the honorable secretary, the honorable treasurer, and, the deputy president (he died on 30 August 1999, ie after this action was filed) — for the following orders:

(a) a declaration that the annual general meeting ('AGM') held on 1 July 1998 and the election of the president, deputy president, honorable secretary, assistant honorable secretary, honorable treasurer, committee members, trustees and auditors, are all null and void and of no effect;

(b) an injunction restraining the defendants and or their servants or agents, executive committee members, trustees and auditors, all elected on 1 July 1998, from carrying out the duties and functions to which they were elected, until the disposal of this action;

(c) an injunction restraining the defendants and or their servants or agents, executive committee members, from bringing into or erecting an image of the Goddess of Mercy in the temple premises;

(d) an order ordering the defendants, within 24 hours of service of the order, to surrender all cheque books, fixed deposits and savings account books, receipt books, minutes books and register of members to the Registrar of the High Court, Muar;

(e) an order ordering the society, and or the defendants, their servants and or agents to hand all properties of the society over to the executive committee elected on 18 February 1996 or to such other person as the court deems proper;

(f) an order ordering the executive committee elected on 18 February 1996 to convene an annual general meeting of the society before 30 October 1999;

(g) an injunction restraining the society and or defendants and or their servants or agents from locking the temple or other buildings of the society and from stopping the management of the assets of the society

by the executive committee elected on 18 February 1996 or person appointed by the court.

Evidently, the plaintiffs' challenge the very legality of the annual general meeting held on 1 July 1998. The plaintiffs pleaded that contrary to the Constitution of the society, the first, second and third defendants: (i) had not given ten days prior notice of the AGM; (ii) had not submitted a report of the activities of the society or audited statement of the income and expenditure of the society to the committee for its acceptance and approval; (iii) had not permitted qualified members to cast their votes at the AGM; (iv) instead, had permitted not qualified persons to vote at the AGM; (v) had not submitted accounts to the honorable Auditors for audit; (vi) had failed to deposit all monies of the society in an account of the society; (vii) had not permitted the second plaintiff to speak at the AGM; (viii) had appointed an undischarged bankrupt as an advisor of the society; and (ix) had expended, without the prior approval of the general body, a sum in excess of RM10,000.

Denying those allegations, the second and third defendants (the action against the first defendant was discontinued on 15 March 2000) pleaded: (i) that all due notice of the AGM was given; (ii) that the members were informed of the activities of the society and accounts of the temple, but because the first plaintiff and some other committee members had walked out from the committee Meeting held on 17 June 1998, they submitted those reports to the members present at the 1 July 1998 AGM, who approved those reports; (iii) that all who voted at the 1 July 1998 AGM had been scrutinized by scrutineers elected at the 1 July 1998 AGM, and were members; (iv) that accounts were audited by auditors appointed by the executive committee and not by auditors appointed by the general body who had not taken action to audit the accounts and whose membership had lapsed; (v) that the first plaintiff was permitted to speak at the AGM, but the first plaintiff's proposal to adjourn the 1 July 1998 AGM was rejected by the general body who decided to proceed with the 1 July 1998 AGM; (vi) that no persons were ever appointed advisors of the society; and (ix) that all expenditure were with prior approval of the executive committee.

Both sides also pleaded with considerable detail on the 'facts' surrounding the 17 June 1998 committee Meeting (CM). The plaintiffs pleaded: (i) that ten committee members, by their letter sent on 13 June 1998, expressed no confidence in the first, second and third defendants; (ii) that notice convening the 17 June 1998 CM was given by letter dated 16 June 1998 and signed by the second defendant; (iii) that the business of the 17 June 1998 CM, amongst others, was to fix the date for the AGM; (iv) that at the 17 June 1998 CM, the committee members who had requested but failed to obtain the accounts and financial reports of the society from the first, second and third defendants, together with the assistant secretary walked out from the 17 June 1998 CM; (v) that after the 17 June 1998 CM, the second defendant notified members that the AGM would be held on 1 July 1998, (vi) that by letter dated 29 June 1998 to the

first and second defendant, the second plaintiff requested for the AGM to be adjourned for two months, so as to regularize all requirements; (vii) that at the 1 July 1998 AGM, the second plaintiff attempted but was not permitted to speak on the irregularities touching on the 1 July 1998 AGM; and (viii) that at the 1 July 1998 AGM, the first, second, third and fourth defendants were respectively elected the president, the honorable secretary, the honorable treasurer, and, the deputy president, for the term 1998/2000.

On the other hand, even though admitting that the business of the 17 June 1998 CM, amongst others, was to fix the date for the AGM, the second and third defendants pleaded: (i) that five office-bearers and nine committee members attended the 17 June 1998 CM; (ii) that the assistant secretary and all committee members (except N Thanasingham) requested for the 17 June 1998 CM to proceed but refused nonetheless to sign the attendance book; (iii) that the first defendant informed that the committee meeting would not proceed until they (those not signing the attendance book) had signed the attendance book; (iv) that they (those not signing the attendance book) then walked out from the 17 June 1998 CM; (v) that those who remained at the 17 June 1998 CM called for an AGM of the society; (vi) that the second plaintiff walked out from the 1 July 1998 AGM when he was asked by the first defendant and others why he (second plaintiff) was raising procedural issues on the AGM; and (vi) that all procedure had been followed.

As said, the plaintiffs challenge the very legality of the 1 July 1998 AGM. However, the specific ground for saying that the AGM was illegal was only made clear after much evidence was adduced, on the notice or lack of notice of the 17 June 1998 CM, on the reports and accounts or lack of reports and accounts of the society, on the membership, on the adjournment of the AGM, from 27 June 1998 to 1 July 1998, on the members or non-members voting at the 1 July 1998 AGM, on the proceedings at those meetings, and, so it would seem, on just about everything pertaining to the affairs of the society. Inevitably, the cross-examination was just as long and tedious. But practical sense prevailed in the midst of the examination in chief of PW4. Both learned counsel (Mr E Ramasamy for the first and third plaintiffs, Mr N Chandra Mohan for the second and third defendants) and the second plaintiff (in person) agreed, that the committee's sanction or no-sanction for the 1 July 1998 AGM could dispose of the issue of the illegality of the 1 July 1998 AGM. All parties also agreed that the 1 July 1998 AGM was null and void, if it is the finding that the 1 July 1998 AGM was not sanctioned by the committee; other issues would be tried only if it is the finding that the 1 July 1998 AGM was sanctioned by the committee. A consent order was recorded on those terms. In the result, the trial became, perhaps only for the time being, a trial of an agreed preliminary issue — whether the 1 July 1998 AGM was sanctioned or not sanctioned by the committee of the society. Thereafter, but only of course, the trial was expedited — Mr Ramasamy cut short the evidence from his side, the second plaintiff adopted the evidence adduced

by his co-plaintiffs, and Mr Mohan confined the defendants' evidence to the preliminary issue. Needless to say, these grounds of judgment are confined necessarily to that preliminary issue.

The following facts are not in dispute. On 17 June 1998, 14 committee members (including the plaintiffs and defendants) attended the 17 June 1998 CM. Nine committee members (including the plaintiffs and the assistant secretary) refused to sign the attendance book. Those committee members and assistant secretary walked out from the 17 June 1998 CM. An AGM was held on 1 July 1998.

Both sides agree that the notice in Tamil convening the 17 June 1998 CM is p 14 of the plaintiff's bundle of documents (PB14), whilst the translation of PB14 is that in PB15, which is now reproduced below:

Sri Mariamman Temple Paripalana Saba

Penerima-penerima Tarikh: 16 Jun 1998

| | | |
|---|---|---|
| 1 | En A T Nagappan | Pengerusi |
| 2 | En N Balasubramaniam | Naib Pengerusi |
| 3 | En S Murugiah | Penolong Setiausaha |
| 4 | En N Selvaraju | Bendahari |
| 5 | En T Parasuraman | AJK |
| 6 | En Indran Ramanathan | AJK |
| 7 | En A Ravindran | AJK |
| 8 | En R Paneerselval | AJK |
| 9 | En S Navaretnam | AJK |
| 10 | En M Arjunan | AJK |
| 11 | En L Govindasamy | AJK |
| 12 | En N Thanasingam | AJK |
| 13 | En P Nathan | AJK |
| 14 | En S Jakatimukan | AJK |

Tuan-tuan

Per: Mesyuarat Ahli Jawatankuasa

Adalah dengan hormatnya, tuan-tuan dijemput hadir di Mesyuarat Jawatankuasa yang akan diadakan pada 17 Jun 1998 — Hari Rabu — Jam 8 malam, bertempat di Kuil Sri Mariamman Batu Pahat dan akan dipengerusi oleh En A T Nagappan, pengerusi Saba.

Kehadiran tuan-tuan adalah sangat diharapkan.

Yang benar

T Krishnan
Setiausaha, Sri Mariamman Temple Paripalana Saba
P O Box 49, Batu Pahat.

1 Menerima minit yang lalu

2 Menerima & membentang lapuran 1995/1996/1997

3 Menerima & membentang lapuran kewangan Saba 1995/1996/1997

4 Menerima & membentang lapuran kewangan 'Building Fund' 1995

5 Menetapkan tarikh untuk mengadakan Mesyuarat Agung Tahunan

6 Lain lain hal

Both sides also agree that pp 75–85 of the defendants' first bundle of documents [DB1 (75–85)] is the Constitution of the society, that P4 is the original handwritten minutes in Tamil of the 17 June 1998 CM and that DB1(3) is the translation of those minutes: DB1(3) reads as follows:

Sri Mariamman Temple Paripalana Saba
Mesyuarat Ahli Jawatankuasa Yang Kedua

Tarikh: 17 Jun 1998

Tempat: Bangunan Sri Mariamman Temple

Masa: 8 malam

Pengerusikan oleh En AT Nagappan (Presiden)

| | | | |
|---|---|---|---|
| Agenda: | 1 | Menerima minit yang lalu |
| | 2 | Menerima & membentang lapuran 1995/1996/1997 |
| | 3 | Menerima & membentang lapuran kewangan Saba 1995/1996/1997 |
| | 4 | Menerima & membentang lapuran kewangan 'Building Fund' 1995 |
| | 5 | Menetapkan tarikh untuk mengadakan Mesyuarat Agung Tahunan |
| | 6 | Lain-lain hal |

Yang hadir:

| | | |
|---|---|---|
| Presiden | AT Nagappan | Menandatangani hadir |
| Naib Presiden | N Balasubramaniam | Menandatangani hadir |
| Penolong Setiausaha | S Murugiah | Menandatangani hadir |

| | | |
|---|---|---|
| Bendahari | N Selvaraju | Tidak menandatangani hadir |
| AJK | T Parasuraman | Tidak menandatangani hadir |
| AJK | R Indran | Tidak menandatangani hadir |
| AJK | A Ravindran | Tidak menandatangani hadir |
| AJK | R Pannirselvam | Tidak menandatangani hadir |
| AJK | S Navaretnam | Tidak menandatangani hadir |
| AJK | M Arjunan | Tidak menandatangani hadir |
| AJK | L Govindasamy | Tidak menandatangani hadir |
| AJK | N Thanasingam | Tidak menandatangani hadir |
| AJK | P Nathan | Tidak hadir |
| AJK | S Jakathimogan | Tidak menandatangani hadir |

Yang hadir 14 orang AJK kecuali En P Nathan. Yang menandatangani lima orang sahaja. Yang lain enggan menandatangani.
En Indran berkata supaya meneruskan mesyuarat ini. Setiausaha menegaskan bahawa, sehingga buku tandatanganan ini belum ditandatangani mesyuarat ini tidak akan dijalankan. En Indran bangun dan memberi tiga pucuk surat kepada Presiden, Setiausaha dan Bendahari. Dan beliau juga menyuruh supaya membaca surat itu. Presiden sekali lagi menegaskan bahawa sekiranya buku tandatangan ini tidak ditandatangani mesyuarat ini tidak akan diteruskan. Selepas itu, semua AJK bangun dan keluar kecuali En N Thanasingam.

Disahkan:
N Thanasingam

Disokong oleh:
AT Nagappan

The testimony of the witnesses, that touching on the preliminary issue, may be summarized as follows.

The first plaintiff ('PWI'), a committee member of the society from 1995 to 1 July 1998, testified that the committee had not decided on the date for the AGM when he walked out from the 17 June 1998 CM. After 17 June 1998, he was not notified of any further committee meeting. On or about the 27 June 1998, he got to know from friends that the AGM would be held on 1 July 1998. He attended that AGM, but he left halfway through that AGM with a few friends, as he was not happy with the manner of the conduct of the AGM.

Murugiah a/l Suppiah ('PW4'), the assistant secretary of the society from 1985 to 1 July 1998, testified that the date for the AGM, during the term of his office, was always decided by the committee. PB(14–15) was the notice of the 17 June 1998 CM that he received. The second defendant signed PB(14–15) on behalf of the committee. The agenda was given in the lower half of PB(14–15). He attended the 17 June 1998 CM. There was no

discussion of the agenda. Not one of the items in the agenda was discussed. No further committee meeting was held before 1 July 1998. There is no record that the committee on 17 June 1998 agreed to the AGM to be held on 1 July 1998. Cross-examined, PW4 denied knowledge that the 1 July 1998 AGM was adjourned from 27 June 1998, or that 27 June 1998 was the original date fixed by the 17 June 1998 CM for the AGM.

Paneiselvam a/l Ratnam ('PW5'), a committee member of the society until 1 July 1998, testified that items two, three and five of the agenda were not discussed at the 17 June 1998 CM. Crossed-examined, PW5 said that those who signed DB1(103–104) walked out from the 17 June 1998 CM after they handed DB1(103–104) to the first, second and third defendants. PW5 agreed with Mr Mohan, that he did not know what was discussed after he had walked out from the 17 June 1998 CM.

The last witness for the plaintiffs, lo and behold, was the one time first defendant — Nagappan a/l Athiyan Chetty @ AT Nagappan (PW6) — the president of the society from 18 February 1996 to 16 April 1999 and who chaired the 17 June 1998 CM. He testified that items two, three and five of the agenda were not discussed on 17 June 1998. After 17 June 1998, no other committee meetings decided on the date for the AGM. The committee had not empowered the second defendant to fix the date for the AGM. He only got to know, on 27 June 1998, of the AGM.

Crossed-examined, PW6 testified that the first plaintiff and his 'friends' submitted DB1(103–104) and then walked out from the 17 June 1998 CM. All ordinary committee members, except for N Thanasingam, walked out from the 17 June 1998 CM. He ('PW6') did not say, as they were walking out, that all would meet on 27 June 1998.

PW6 did not agree with Mr Mohan, that he and the defendants agreed in May 1998, that 27 June 1998 would be the date for the AGM. PW6 agreed with Mr Mohan that he proposed, on 17 June 1998, that the AGM be held on 27 June 1998. But PW6 qualified that the date for the AGM was never discussed at the 17 June 1998 CM. On 20 June 1998, he received DBI(54). On the same day, he met the defendants. PW6 did not agree with Mr Mohan, that on 20 June 1998, he and the defendants agreed to postpone the AGM from 27 June 1998 to 1 July 1998. PW6 agreed with Mr Mohan that prior notice was given of the postponement of the AGM from 27 June 1998 to 1 July 1998, and that he signed that notice. Re-examined, PW6 affirmed that P4 is the handwritten minutes of the 17 June 1998 CM.

The only witness summoned by the defence was the second defendant (DW1), who testified that in June 1998, he was the secretary of the society. He issued PB(14–15). He attended the 17 June 1998 CM. Those who attended the 17 June 1998 CM were those in DB1(3). He asked those who attended the 17 June 1998 CM to sign the attendance book. Some refused to sign the attendance book, but nevertheless demanded the committee meeting to proceed. PW6, the third defendant and himself asked those who refused to sign the attendance book how that meeting could proceed if they would not sign the attendance book. They submitted a letter PB1(12) to

PW6, the treasurer and himself. They asked that their letter, PB1(12), be read out. We asked them to be patient. But they walked out instead from the 17 June 1998 CM. He asked PW6 what should they do. PW6 and the others present then agreed that the AGM would be held on 27 June 1998. PW6 proposed 27 June 1998 as the date for the AGM. He forgot to record the decision of the committee. No other matters were discussed. Cross-examined, DW1 agreed, 'isi kandungan DB1(3) menunjukkan apa-apa yang berlaku pada 17 June 1998'. 'Saya setuju majlis AJK yang berhak menetapkan tarikh AGM.' There was a meeting without notice, between PW6, the treasurer and DW1.

Mr Mohan submitted that the 1 July 1998 AGM was properly called. It was mandatory to get the prior consent of a full committee. The secretary must consult the president on important matters. But r 33(b)(01) of the Constitution empowered the secretary alone to summon the AGM. It was only a practice to consult the committee. It was only a practice that the committee would fix the date for the AGM. If it was the right of the committee to fix the date for the AGM, then by walking out, the plaintiffs had waived their rights to participate in the decision on the date for the AGM. On 17 June 1998, the committee decided that the AGM would be held on 27 June 1998. However, on 20 June 1998, PW6 and the second defendant adjourned the AGM to 1 July 1998. There was a valid committee meeting on 17 June 1998. The 17 June 1998 CM decided that the AGM would be held on 27 June 1998. The decision of the remaining committee was the decision of the committee. With regard to that latter proposition, Mr Mohan cited the Federal Court case of *Tan Kah Wich & Ors v Datuk Phua Cheng Leong* [1979] 2 MLJ 259. There was a committee meeting on 20 June 1998, notwithstanding that the plaintiffs and those who walked out from the 17 June 1998 CM were not informed. They had expressed no confidence in the office bearers, and so it was 'pointless' to call them for the committee meeting on 20 June 1998. Mr Mohan lastly submitted, on the authority of *Sivasubramanian v Chong Cheong Wah* [1973] 1 MLJ 157, that the plaintiffs, because of delay in bringing this action, are not entitled to the remedy of a declaration.

Mr Ramasamy submitted that the committee had the supreme power to fix the date for the AGM. The notice PB(14–15) makes that very clear. Therein, the agenda was set out. Item five was never discussed. P4 is the proof of the decisions taken on 17 June 1998. The second defendant maintained those minutes. The 17 June 1998 CM was adjourned. If the date for the AGM was decided, it would have been recorded. Evidence could not be adduced to vary P4. There was no meeting on 20 June 1998. Admittedly, the plaintiffs had walked out from the 17 June 1998 CM. But the plaintiffs had not resigned from the committee. If there was a committee meeting on 20 June 1998, then the plaintiffs were entitled to attend and vote at that committee meeting. If there was a committee meeting on 20 June 1998, an AGM could not be held within clear ten days. If there was any delay, it was because the plaintiffs had attempted to get the Registrar of Societies to intervene and put the house in order. Only after their request for a fresh AGM were not entertained and only after they were informed

A that the Registrar of Societies would not interfere, could the plaintiffs file this action. Only in September 1999, were the plaintiffs informed that the Registrar of Societies would not intervene. There was no delay.

The second plaintiff adopted wholesale that submission.

One side, it would seem, was not keeping track of the agreed B preliminary issue. To recapitulate, the agreed preliminary issue is whether the 1 July 1998 AGM was convened with or without the sanction of the committee. And also to recapitulate, the agreement before the court is that the 1 July 1998 AGM, if it was convened without the sanction of the committee, is null and void, unless the court also finds the plaintiffs, because of delay in bringing this action, are not entitled to the remedy of a C declaration. The agreed preliminary issue is not whether the secretary alone, without the sanction of the committee, could convene the AGM. It may well be, that the secretary alone, without the sanction of the committee, could convene and fix the date for the AGM. But that has no correlation to the agreed preliminary issue. Based on the agreement in court, the AGM is null and void, if it is the finding that the AGM was convened without the D sanction of the committee, quite regardless of the question whether the sanction of the committee was required under the Constitution.

In fact, under the Constitution of the society, an annual general meeting must be sanctioned by the committee. That is evident from r 15, which reads:

E

> The management of this saba shall be vested in the managing committee elected by the general body. This managing committee shall be for the protection of all the properties, funds and promotion of all activities of the saba.

That the management of the saba, meaning the society, was vested solely in F the committee is also evident from r 22, which reads:

(a) The managing committee shall be responsible for everything connected with the management of the temple and the burial grounds.

(b) The managing committee elected from time to time shall be responsible for all movable and immovable properties, funds and all G the money belonging to the temple and the burial ground.

(c) The managing committee elected from time to time shall be responsible for the improvement of the temple and burial ground.

(d) To undertake all measures necessary for the promotion of the aims according to r 3.

H

(e) …

(f) …

(g) …

Rule 33 specifies the duties of the office bearers. But all those duties are only I executive in nature. 'The president shall preside over all meetings' (see r 33(a) of the Constitution). The secretary shall 'convene meetings, keep a record of the proceedings of the meetings, conduct all correspondence keep

all records belonging to the saba, [and] carry out the decisions of the saba' (see r 33(b)(01–03) of the Constitution). Admittedly, r 33(b)(01) states that the secretary shall 'convene' meetings. But that word 'convene' should not be read in isolation. In the context of the Constitution of the society which must be read as a whole, the secretary shall 'convene' meetings only if so decided and directed by the committee. Without the sanction or approval of the committee, the secretary has no plenary powers to convene an AGM. The secretary is the servant rather than the overlord of the society. On the matter of an annual general meeting, which is most serious business, the secretary cannot decide for the society. The argument that DW1 alone, without the sanction or approval of the committee, could convene the AGM, is just not tenable. Anyway, that latter argument, by right, should not have been taken up, as both parties tacitly agreed, given the terms of the agreed preliminary issue, that the sanction of the committee for the AGM to be convened was essential.

Even less could be said of the argument that there was a committee meeting on 20 June 1998. Mr Mohan contended that notice was not given to the plaintiffs as they (plaintiffs) had walked out from the 17 June 1998 CM, and so it was pointless as such to notify the plaintiffs of the meeting on 20 June 1998. Granted, the plaintiffs had expressed no confidence in the principal office bearers and had walked out from the 17 June 1998 CM. But they had not vacated their seats. Yet they were committee members, with the right to notice of and to attend all plenary sessions of the committee. If there was a meeting on 20 June 1998, then most certainly it is null and void.

And that 'meeting' on 20 June 1998, if there was such a meeting, is null and void also because it was not called in accordance with the Constitution of the society. Rule 23(a) stipulates that 'the managing committee shall meet at least once in every month'. Rule 23(b) stipulates that 'an extra ordinary meeting of the managing committee shall be called upon the written request of the president or any four of the committee members'. As such, an EGM of the committee could be called, only upon the written request of the president or any four of the committee members. But there is no evidence, not even from the defendants, that the president or any four of the committee members had requested, be it orally or in writing, for an EGM of the committee. Both PW6 and DW1 testified that the president, secretary and treasurer met on 20 June 1998. But that 'meeting' on 20 June 1998, was no meeting of the committee. 'The mere fact that a number of members sufficient to form a quorum, may meet casually, does not constitute a meeting where the other requisites are absent' (*Shackleton on the Law and Practice of Meeting* (8th Ed) para 5–02). In the case of the so called 20 June 1998 CM, without notice, not properly called, and without a quorum (r 19 of the Constitution of the society provides that 'a minimum of $^{2}/_{3}$ of the managing committee shall form a quorum of the meeting'), it was no meeting of the committee. Needless to say, all 'decisions' reached thereat, were not decisions of the committee.

But that 17 June 1998 CM was a meeting of the committee. There was notice beforehand (PB14–15) of that meeting, and there was the required

quorum at that meeting. The fact that only five committee members signed the attendance book does not change the agreed fact that 14 out of 15 committee members were present. The only snag was that nine committee members (including the plaintiffs) later walked out from the 17 June 1998 CM. Mr Mohan submitted that the decision of the remaining committee was the decision of the committee. Indeed, it would appear from the following authorities, that any decision taken at the 17 June 1998 CM, after the plaintiffs withdrew themselves, was a decision of the 17 June 1998 CM and binding on the society.

In *Tan Guan Eng v BH Low Holdings Sdn Bhd & Ors and other actions* [1992] 1 MLJ 105, the extra ordinary meeting commenced with the required quorum of two, but that quorum was lost in the midst of the meeting. Article 69 of the company provided, 'No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business'.

There, Wan Adnan bin Ismail J (as he then was) held, at pp 115–116:

> The quorum is required only at the time when the meeting proceeds to business (see *Re Hartley Baird* [1954] 3 All ER 695). There was a quorum present when the meeting proceeded to business. After the departure of Mr Ng Kweng Hee, Mr Tan Guan Cheng and Mr Gooi Seng Hooi, only Mr Saw the valid proxy remained … In my view, in the circumstances of the case the continued EGM with the presence of only the valid proxy of Tan Guan Sooi @ Tan Guan Eng was a meeting.

His Lordship would be called upon to enunciate once more on the issue of the quorum after a meeting has proceeded to business. In *Cheang Kok Cheow v Setiausaha Kehormat Bagi Pertubuhan Akitek Malaysia & Anor* [1994] 1 CLJ 252, the plaintiff applied for a declaration that the resolution passed by 36 members, whereas the required number to constitute a quorum was 46, was null and void. Again, Wan Adnan bin Ismail J expressed the same opinion:

> It was not disputed that at the commencement of the meeting, 60 members were present.
>
> Clause VI 7 of the revised Constitution provides as follows:
>
> No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business …
>
> In *Re Hartley Baird* [1954] 3 All ER 695, it was held that the condition of art 52 (which is same as cl VI 7 stated above) was sufficiently complied with if there was a quorum present at the beginning of the meeting when it proceeded to business, and the subsequent departure of a member reducing the meeting below the number required for a quorum did not invalidate the proceedings of the meeting after his departure. I agree with that decision. Therefore, the resolution was validly passed.

And in the case of *Tan Kah Wich & Ors v Datuk Phua Cheng Leong* cited by Mr Mohan, the Federal Court held that the special general meeting which the remaining members continued after the president left was a valid meeting.

According to *Unincorporated Associations: Law & Practice* (2nd Ed) by Jean Warburton at p 26, 'a member who deliberately withdraws from a meeting, so as to remove the quorum may not rely on that loss of quorum in seeking relief from decisions taken after his departure'. A

The instant provision in the Constitution of the society on the required quorum for the transaction of any business at the committee meeting is not exactly the same as that in *Tan Guan Eng v BH Low Holdings Sdn Bhd* or *Kok Cheow v Setiausaha Kehormat Bagi Pertubuhan Akitek Malaysia & Anor* Nonetheless, r 19 does not say that the required quorum must be present throughout the committee meeting. And reasonably, it should not be so constructed. Already, the required $^2/_3$ quorum would not prevent a minority of the committee members controlling the quorum present at about the time when the committee would proceed to business. Worse still, a $^2/_3$ quorum throughout the meeting would even result in a small number of committee members present dictating to the committee. To read r 19 to mean that the quorum must be present throughout the committee meeting would only produce an unfair and unjust result. Sensibly, no argument was raised that the quorum was lost when those nine committee members left the 17 June 1998 CM. B C D

But it was contended that the remaining committee decided to have the AGM on 27 June 1998. Except that that important matter was not minuted. DW1 said it was an oversight. But it would not appear that the remaining committee had proceeded to business. What was minuted by DW1 himself, was that both DW1 and PW6 announced at the meeting that the meeting would not proceed unless all had signed the attendance book. Rather it would appear, and this is consistent with the announcement that the meeting would not proceed unless, that the meeting just ended, just like that after the plaintiffs left, without any decision taken on the agenda. Since it was announced to all present that the meeting would not proceed unless …, it would have been vile and machiavellian on the part of the remaining committee to proceed to business. But if the remaining committee proceeded nonetheless to business, then where are those minutes? If it was just not minuted, because of an oversight, then why were the minutes not amended all this while? Had not DW1 himself verified those minutes appearing in DB1(3)? With respect, it does not add up that DW1 had forgotten to minute the proceedings. Given the material before the court, the only reasonable conclusion must be that the 17 June 1998 CM had not proceeded at all to business. There was no sanction for the AGM to be held on 27 June 1998 or 1 July 1998. Also, there was no delay; unlike *Sivasubramaniam v Chong Cheong Wah* where the declaration was only sought at a late stage of the trial, the instant declaration was sought right from the start. E F G H

For the reasons herein, the 1 July 1998 AGM is declared as null and void. As for the consequential orders, it was agreed beforehand that the following should follow. Accordingly, it is ordered: (i) that the secretary (second defendant) and assistant secretary of the 1996 committee do jointly convene an AGM of the society within two months from the date hereof, to I

be chaired by the vice president of the 1996 committee, to elect the office bearers and committee members of the society for the term 2000–2002; (ii) that notice of the AGM be advertised in a vernacular newspaper and posted by pre-paid post to the members; (iii) that only those members named in PB50–63 and who are not in arrears of their subscription shall be eligible to attend and vote at that AGM; (iv) that not less than four weeks from the AGM, the treasurer (third defendant) of the 1996 committee do display a list of those members with details of their subscription on the notice board of the society; and (v) that the third defendant be at the temple premises, on each Monday, Wednesday and Friday for the two weeks preceding that AGM, to collect subscription from members. Lastly, it is ordered that the society do pay the costs of this action to the first and third plaintiffs, and that the society do reimburse the second plaintiff for all actual expenses.

Hopefully, both sides would accept, if two people ride on a horse, one of them must ride behind.

*Plaintiffs' application allowed with costs.*

Reported by Moy Saw Han